



## 45 Creeper Hill Road -- Question for town counsel from ZBA Chairman

1 message

Ginny K. <ginny@kremerlaw.net>

Tue, Mar 1, 2022 at 2:07 PM

To: Robert Berger <bergerr@graffon-ma.gov>, "bwaller@sequellaw.com" <bwaller@sequellaw.com>

Cc: Katrina Koshivos <koshivosk@graffon-ma.gov>, Leah Cameron <cameronl@graffon-ma.gov>

Hi Brian:

This is an interesting case that could be used as a law school exam question -- never a good thing! There are several issues I can see--and potential arguments to be made--on various "sides" of this issue. However, based on my research, please see my responses to your specific questions:

1. Can the ZBA grant a variance to the holder of an easement on property owned by another party? Yes if the Board finds the standard is met. An easement is an interest in real property and can be used for whatever purposes the easement instrument allows (and are allowed in the district in which the real estate is located). Here the easement is for the benefit of #45 "for driveway, utility and other purposes normally incidental . . . ." So use as a driveway is expressly contemplated.
2. Can the ZBA grant a variance to the holder of an easement if the owner of the land objects? Yes. The standard for granting a variance is the same no matter who owns the real estate in question. Here the applicant owns (or will own) the easement so has standing to request a variance. The ZBA should apply the variance standard as usual and make the findings required by that standard, positive or negative. The owner of the servient estate essentially has the status of an abutter, and can certainly make arguments that a variance would derogate from the purpose/intent of the ZBL or otherwise cause harm. But the owner of the servient estate is stuck with the fact that a common predecessor conveyed an easement over their property, and that is not a separate legal basis for objection. I.e., they may enjoy living next to vacant land, but that does not give them any more rights than a regular abutter.
3. I opined separately yesterday to an inquiry by the ConCom that the ZBA has authority over the requirements of the Zoning By Law, whereas the Conservation Commission has authority to consider waiver requests for requirements of the local Wetlands By Law. Please let me know if you have any questions about that.

Please let me know if that answers your questions or you would like to further discuss.

Thanks,

Ginny

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Ginny S. Kremer, Esq.

Kremer Law, LLC

9 Damonmill Square, Suite 4A4

Concord, MA 01742

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Zoning Board of Appeals

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2022 MAR 10 1 PM 1:45

From: Ginny K.

Sent: Friday, February 11, 2022 2:37 PM

To: Katrina Koshivos <koshivosk@graffon-ma.gov>

Subject: RE: Question for town counsel from ZBA Chairman

Thanks!!

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**From:** Katrina Koshivos <[koshivosk@graffon-ma.gov](mailto:koshivosk@graffon-ma.gov)>

**Sent:** Friday, February 11, 2022 12:09 PM

**To:** Ginny K. <[ginny@kremerlaw.net](mailto:ginny@kremerlaw.net)>; Brian Waller <[bwaller@sequellaw.com](mailto:bwaller@sequellaw.com)>; Robert Berger <[bergerr@graffon-ma.gov](mailto:bergerr@graffon-ma.gov)>

**Subject:** Re: Question for town counsel from ZBA Chairman

Ginny,

Here is the link to the information on the ZBA webpage.

45 Creeper Hill - Variance

Katrina Koshivos  
Town of Grafton  
Zoning Board of Appeals  
[30 Providence Road](#)  
Grafton, MA 01519

508-839-5335 ext. 1157

***EFFECTIVE 2/1/2022 THE MUNICIPAL CENTER BUILDING IS BACK OPEN TO THE PUBLIC.***

***MASKS MUST BE WORN TO ENTER THE BUILDING.***

**PLEASE BE ADVISED, THE NEW HOURS AT THE MUNICIPAL CENTER EFFECTIVE 7/5/2021 ARE AS FOLLOWS:**

**MONDAY, WEDNESDAY, & THURSDAY 8:30-4:30**

**TUESDAY 8:30 - 7:00 P.M.**

**FRIDAY 8:30 - 1:00 P.M.**

On Fri, Feb 11, 2022 at 11:59 AM Ginny K. <[ginny@kremerlaw.net](mailto:ginny@kremerlaw.net)> wrote:

Hi Katrina:

So the applicant owns an easement on abutting property and wants a variance?

A variance for what?

I think the answer is not but is there an application I can look at?

Thanks!!

Ginny

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Ginny S. Kremer, Esq.

Kremer Law, LLC

**9 Damonmill Square**, Suite 4A4

Concord, MA 01742

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**From:** Katrina Koshivos <[koshivosk@graffton-ma.gov](mailto:koshivosk@graffton-ma.gov)>

**Sent:** Friday, February 11, 2022 11:42 AM

**To:** Ginny Kremer <[ginny@bbhlaw.net](mailto:ginny@bbhlaw.net)>

**Cc:** Brian Waller <[bwaller@sequellaw.com](mailto:bwaller@sequellaw.com)>; Robert Berger <[bergerr@graffton-ma.gov](mailto:bergerr@graffton-ma.gov)>

**Subject:** Question for town counsel from ZBA Chairman

Ginny,

Please see the question below from my Chairman.

Here are the questions: can the ZBA grant a variance to the holder of an easement on property owned by another party?

Can the ZBA grant a variance to the holder of an easement if the owner of the land objects?

Katrina Koshivos  
Town of Grafton  
Zoning Board of Appeals  
**30 Providence Road**  
Grafton, MA 01519

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On Fri, Feb 11, 2022 at 11:02 AM Brian Waller <[bwaller@sequellaw.com](mailto:bwaller@sequellaw.com)> wrote:

Hi Katrina - Bob suggested reaching out to town counsel about the question below. Do you typically forward it on to them or do I contact them directly? I am fine with either - whatever is easier for you.

Here are the questions: can the ZBA grant a variance to the holder of an easement on property owned by another party?  
can the ZBA grant a variance to the holder of an easement if the owner of the land objects?

Thanks!

Brian Waller

Principal Attorney

[Sequel Law LLC](#)

o: (508) 986-9966

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[Schedule a call with me](#)

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